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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,979	10/09/2003	Carl Joseph Thaemlitz	HALB:023D1	7801

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EXAMINER
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TUCKER, PHILIP C

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/681,979	<b>Applicant(s)</b> THAEMLITZ, CARL JOSEPH	
	<b>Examiner</b> Philip C. Tucker	<b>Art Unit</b> 1712	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 13-20 and 26-41 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-20, 26-33 and 35-41 is/are rejected.
- 7) ☒ Claim(s) 34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 13-19, 35, 36 and 38-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Mueller (6022833).

Mueller teaches an invert emulsion fluid which comprises an ester as the continuous phase, a sorbitan monolaurate ester surfactant, a polyoxyethylene glycerolmonococoate surfactant, and calcium chloride brine as internal phase (see example 7). A fluid loss additive may also be present (see claim 19). Such would inherently possess micelles having a denser concentration in the palisade layer, than that of the emulsion containing either surfactant alone.

3. Claims 38-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Walker (4464269).

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Walker teaches an oil based well fluid which comprises a mixture of surfactants comprising a propoxylated alcohol, sorbitan monooleate and imidazoline (see example 5b). Such would inherently provide the specified electrical conductivity effects.

Applicants intended use as a drilling fluid does not distinguish (In re Pearson 181 USPQ 641).

4. Claims 13 and 38-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Reifschneider (4729987).

Reifschneider teaches a fluid which comprises acetone, sorbitan trioleate and polyoxyethylene sorbitan monolaurate (see example 6). Such would inherently possess micelles having a denser concentration in the palisade layer, than that of the emulsion containing either surfactant alone, and the specified electrical conductivity effects. Applicants intended use as a drilling fluid does not distinguish (In re Pearson 181 USPQ 641).

5. Claims 38-41 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 00/41480.

WO '840 teaches an invert oil based well fluid which comprises a mixture of surfactants comprising a fatty acid diethanolamide and alpha-olefin sulfonate (see example 3). Such would inherently provide the specified electrical conductivity effects.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 13, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller (6022833).

Mueller is taught above. Mueller differs from the present invention in teaching the specified fluid loss control additives of claim 20. However, such additives, especially calcium carbonate are notoriously well known as fluid loss additives in well fluids, and their use would be obvious to one of ordinary skill in the art, over the general teaching of fluid loss additives in claim 19 of Mueller.

8. Claims 13-16, 26-33 and 35-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tadros (4875927).

Tadros teaches an invert emulsion fluid which can comprise vegetable oils as the continuous phase (see column 2, lines 41-46). Such vegetable oils comprise ester oils therein. The emulsifier may comprise a mixture of SPAN and TWEEN (trademarks), which are sorbitan esters and ethoxylated sorbitan esters, respectively (column 3, lines 34-36). Tadros differs from the present invention in that a specific example of the mixture of vegetable oils and SPAN and TWEEN is not exemplified, and the percentage of the oil phase is not specified. It would however be obvious to one of ordinary skill in

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the art to utilize a combination of vegetable oil with SPAN and TWEEN, given the teaching of Tadros that such is useful for making the invert emulsion therein. Such would obviously possess the same properties as the composition of the present claims. The variation of the amount of oil in the invert emulsion to obtain optimum properties therein, would be an obvious variation to one of ordinary skill in the art.


9. Claim 34 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip C. Tucker whose telephone number is 571-272-1095. The examiner can normally be reached on Monday - Friday, Flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on 571-272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Philip C Tucker  
Primary Examiner  
Art Unit 1712

PCT-3909